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REPORT
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APPLICATION OF CARGO PREFERENCE LAWS RELATING TO THE EXPORTATION OF U.S. AGRICULTURAL COMMODITIES

JUNE 24 (legislative day, JUNE 3), 1985.—Ordered to be printed

Mr. DANFORTH, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

together with

MINORITY VIEWS

[To accompany S. 721]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 721) to amend the Commodity Credit Corporation Charter Act regarding the export of agricultural commodities, having considered the same, reports without amendment, unfavorably.

PURPOSE OF THE BILL

The objective of the legislation is to facilitate export of U.S. agricultural commodities by exempting certain Government export programs from the cargo preference laws.

BACKGROUND AND NEEDS

Cargo preference or cargo reservation means that a nation sets aside a portion of its waterborne foreign trade for ships registered under its laws. The United States has three cargo preference statutes currently in force. One of these applies only to military cargoes [1] and is not affected by S. 721.

[1] Act of April 28, 1904, ch. 1766, 33 Stat. 518, as amended by Act of August 10, 1956, ch. 1041, 70A Stat. 146 (codified at 10 U.S.C. 2631).

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S263-26.

Public Resolution 17, passed in 1934, expresses the "sense of Congress that in any loans made by any instrumentality of the government to foster the exporting of agricultural or other products, provision shall be made that such products shall be carried exclusively in vessels of the United States." [2] By its own terms, the resolution does not apply if the Secretary of Transportation certifies that U.S.-flag ships are unavailable or that their rates are unreasonable. Although the language of Public Resolution 17 is broad, in practice it has been applied almost exclusively to loans made by the United States Export-Import Bank (Ex-Im Bank).

The Cargo Preference Act of 1954, also known as Public Law 664, is the most recent, most expansive, and most controversial of the United States' 3 cargo reservation statutes. The act requires at least half of all ocean cargo generated directly or indirectly by the Federal Government to be transported in U.S.-flag vessels, provided such vessels are available at reasonable rates. The law applies whenever the United States (1) buys goods; (2) provides goods to a foreign country for free or without adequate compensation; (3) advances money or credit; or (4) guarantees the convertibility of foreign currency. The act may be waived if the President, the Secretary of Defense, or the Congress declares an emergency.[3]

Both the Senate and the House reports regarding the Cargo Preference Act of 1954 indicate that the act was intended to further the U.S. policy, stated in the Merchant Marine Act, 1936 [4] of having a merchant fleet built, owned, and operated by Americans that is sufficient to meet the nation's domestic and foreign waterborne commerce requirements and capable of serving as a military adjunct in time of conflict.[5] The act expanded and made permanent the 50 percent U.S.-flag shipping requirement that had been included on an ad hoc basis in many prior economic and military foreign assistance statutes.[6] Maryland Senator John Marshall Butler, chief sponsor of the legislation, summarized his arguments in favor of the law in this way:

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[2] Pub. Res. 73-17, ch. 90, 48 Stat. 500 (1934), as amended (codified at 46 U.S.C. 1241-1).

[3] Cargo Preference Act of 1954, ch. 936, 68 Stat. 832 (codified at 46 U.S.C. 1241(b)(1); see H. Rept. No. 2329, 83d Congress, 2d Session 1-2 (1954); S. Rept. No. 1584; 83d Congress, 2d Session 1 (1954). Specifically, the Act states:

> Whenever the United States shall procure, contract for, or otherwise obtain for its own account, or shall furnish to or for the account of any foreign nation without provision for reimbursement, any equipment, materials, or commodities, within or without the United States, or shall advance funds or credits or guarantee the convertibility of foreign currencies in connection with the furnishing of such equipment, materials, or commodities, the appropriate agency or agencies shall take such steps as may be necessary and practicable to assure that at least 50 per centum of the gross tonnage of such equipment, materials, or commodities (computed separately for dry bulk carriers, dry cargo liners, and tankers), which may be transported on ocean vessels shall be transported on privately owned U.S.-flag commercial vessels, to the extent such vessels are available at fair and reasonable rates for U.S.-flag commercial vessels, in such manner as will insure a fair and reasonable participation of U.S.-flag commercial vessels in such cargoes by geographic areas.

[4] Merchant Marine Act, 1936, ch. 858, sec. 101, 49 Stat. 1985 (codified at 46 U.S.C. 1101).

[5] S. Rept. No. 1584, 83d Congress, 2d Session 1 (1954); H. Rept. No. 2329, 83d Congress, 2d Session 1 (1954).

[6] E.g., Act of June 25, 1953, Public Law No. 83-77, sec. 1, 67 Stat. 80 (Pakistan Wheat Bill); India Emergency Food Aid Act of 1951, Public Law No. 82-48, sec. 4(d), 5, 65 Stat. 69; Mutual Defense Assistance Act of 1949, Public Law No. 81-329, sec. 409, 63 Stat. 714; see S. Rept. No. 1584, 83d Congress, 2d Session 1-2, 5 (1954); 100 Congressional Record 5167 (1954) (remarks of Senator Butler).

> American shipping does not want handouts from the government. It wants to earn its way, in the manner that justifies the existence of shipping anywhere: namely, by carrying cargoes. And certainly it is not too much to ask that cargo for our own needs, those which we give away, and those which we finance in one way or another, be equally divided between our own shipping and that of other nation.[7]

Our cargo preference laws reflect a general procurement policy. They apply across the board, not just to agricultural commodities. The Department of Defense (DOD) ships cargo under those laws; and other agencies, such as the National Aeronautics and Space Administration, the Tennessee Valley Authority, the Department of the Treasury, the General Services Administration, the Department of Transportation (DOT), the Department of Energy, and the Ex-Im Bank are also subject to them. Agriculture is not singled out to bear the burden of supporting the U.S. merchant marine.

The blended credit controversy

The requirement that at least 50 percent of all Government-generated cargo move on U.S-flag vessels has been law for over 30 years. Notwithstanding its clear and unambiguous intent, every year one agency or another tries to circumvent that law, and Congress is inevitably drawn into the dispute.

For instance, in 1983, the U.S. Department of Agriculture (USDA) and the Agency for International Development violated the minimum 50 percent requirement for every program under title I and title II of Public Law 480 and section 416 of the Dairy Donation Program. And they did so despite warning from the Maritime Administration (MarAd).[8]

Cargoes guaranteed by the preference laws are essential to the U.S.-flag fleet's survival. According to MarAd, U.S.-flag vessels carried only 5.8 percent of the cargoes that moved in our international trades. Of that amount, 39.8 percent was carried because of the Cargo Preference Act. If DOD cargo is included, over 50 percent of the cargo carried by U.S.-flag vessels was due to the preference laws.

The most recent dispute involves the application of the law to USDA's blended credit program. The blended credit program combines, or blends, interest-free Government credit under the Export Sales Program (also known as GSM-5) with Government-guaranteed private credit under the Export Credit Guarantee Program (GSM-102). The result is a buy-down of approximately 2 percent on the interest rate for private financing of exports under the program.

Up through July 27, 1983, the DOT and MarAd on at least 12 different occasions took the position that the Cargo Preference Act applied to the blended credit program. Since the inception of the program, the Secretary of Agriculture has taken the position that the act does not apply. On July 27, 1983, the Maritime Administra-

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[7] 101 Congressional Record 1081 (1955) (remarks of Senator Butler).

[8] Maritime Administration Annual Report for Fiscal Year 1984, table 18, at 57-8 (see footnote 3).

tor reversed his prior position, stating that the application of the act would result in costs that would entirely offset the program's benefits.

On February 21, 1985, the U.S. District Court for the District of Columbia ruled, in *Transportation Institute* v. *Dole,* that the Cargo Preference Act should be applied to the program.[9] In reaction, the USDA immediately suspended all blended credit shipments because of the increased costs imposed by the requirements of the law, despite the Judge's finding that funds could be administratively reallocated within the existing program to achieve compliance.[10] The case is presently being appealed.

Subsequent to the *Transportation Institute* decision, a number of anticargo preference bills were introduced in the Senate. Several of these bills, including S. 721, (introduced by Sen. Boren, and others on March 20, 1985,) were referred to the Committee on Agriculture, Nutrition and Forestry, while others were given first referral to the Commerce Committee. All of these bills go well beyond a mere reversal of the *Transportation Institute* decision in limiting the application of the cargo preference laws to agricultural export programs.

On April 4, 1985, the full Agriculture Committee held a hearing on S. 721. On May 14, 1985, that committee adopted an amendment in the nature of a substitute and ordered the bill reported. The bill was then sequentially referred to the Commerce Committee until the close of business June 14, 1985, and the referral deadline was extended to June 24, 1985.

Scope of the Cargo Preference Act of 1954

In the *Transportation Institute* decision, it was noted that the 1954 act by its express terms is quite broad in scope. It is not limited merely to foreign aid programs, concessional transactions, or government procurement, but applies, inter alia, whenever the United States "advances{s} funds or credits or guarantee{s} the convertibility of foreign currencies in connection with {export transactions}." A review of the complete legislative history of the Cargo Preference Act demonstrates that it was passed by Congress with the expressed desire that it apply to "programs financed in any way by federal funds." [11]

In 1963, the Attorney General was asked whether certain USDA foreign aid export programs fell within the terms of the Cargo Preference Act. Attorney General Kennedy ruled that they did.[12] Some agencies have interpreted dicta in the Kennedy opinion to mean, contrary to the language and legislative history of the act, that only foreign aid programs are covered by the act. The District Court rejected this interpretation in the *Transportation Institute* decision. The Court also noted that Attorney General's opinions are not conclusive determinations of law and are not binding on the

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[9] 603 F. supp. 888 (D.D.C. 1985).
[10] Id. at 907-7.
[11] See 1954 S. Rept., supra note 5, at 5.
[12] 42 Op. Attorney General 203 (1963).

Federal courts. [13] In addition, the Committee notes that DOT and MarAd, the agencies charged with primary responsibility for interpreting and administering the Cargo Preference Act, have never interpreted the Kennedy opinion to limit the act to concessional or foreign aid export programs.

While some agencies have pointed to the citation with approval of the Kennedy opinion in a subsequent Commerce Committee report,[14] such citation merely reflects approval of the specific result reached in the opinion, and not of every possible interpretation of its dicta as applied to programs not being considered in the opinion. The opinion did not address any direct credit or credit guarantee program. Since the blended credit program didn't even exist until 1983, the Kennedy opinion could hardly have exempted it from cargo preference 20 years before the fact. Moreover, the Committee believes that the Kennedy opinion, properly interpreted, does not impose any foreign aid or concessional precondition to application of the Cargo Preference Act, but merely affirms that when the government participates in an export sale in a manner specifically identified in the act, that export sale is covered by the act.

The Committee observes that there can be no serious question that the Government advances funds and credits in connection with the blended credit program, and that that program therefore falls within the literal language of the Cargo Preference Act. The Committee also notes that even if the Attorney General's opinion were read to limit the act to concessional export programs, the blended credit program would still be subject to the act. Under the terms of the program, the Commodity Credit Corporation [CCC] has extended interest-free credit on 15 percent to 20 percent of each covered sale, as distinguished from any standard commercial transaction. In addition, the exporter is completely protected by the government against any deafult or commercial risk of nonpayment. Given these characteristics of blended credit sales, it is unrealistic to contend that such sales are commercial in nature, or should be exempt from the Cargo Preference Act on the ground that they are made on the best terms and conditions available.

Hearing testimony

There was no hearing on S. 721 in the Commerce Committee. However, on May 6, 1985, the Merchant Marine Subcommittee held a hearing on another anticargo preference bill and related provisions. While that hearing did not address the specifics of S. 721, as amended, it did generate testimony on the application of the cargo preference laws to agricultural export programs generally, and to the blended credit program specifically. Since most of the often-repeated arguments both for and against cargo preference were aired at this hearing, a brief summary of them will help to put this report in perspective.

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[13] *Transportation Institute* v. *Dole*, supra note 8 at 901, citing *Perkins* v. *Elg*, 307 U.S. 325, 349 (1939); and *Pueblo of Taos* v. *Andrus*, 475 F. Supp. 359, 365 n.1 (D.D.C. 1979) ("The Attorney General's opinion is not the judgment of the court of law and cannot operate to change the result arrived at through considered judicial interpretation").

[14] S. Rept. No. 871, 88th Congress, 2d Session, 5–6 (1964).

USDA testified that application of cargo preference to the blended credit program would increase the landed cost of U.S. grain shipped to foreign buyers on U.S. vessels by 15 percent to 30 percent, rendering the U.S. commodity noncompetitive. In a subsequent letter to members of the Senate dated May 24, 1985, the Agriculture Under Secretary for International Affairs and Commodity Programs stated the incremental cost to be 10 percent. Also speaking for the administration, MarAd reaffirmed support for the existing cargo preference laws, stating that the administration's policy is neither to expand nor contract the scope of these laws.

Witnesses from various agricultural groups and trade associations supported the position that the cargo preference law should apply only to so-called "concessional" sales and not to "commercial" sales. While these terms have not been defined with precision, the term "concessional" apparently means those programs which are essentially give-away or partial give-away programs of government-owned commodities. "Commercial" exports are those programs in which some form of government aid is used to develop, expand, or maintain a foreign market for U.S. agricultural commodities. By this definition, the blended credit program is a commercial program.

These witnesses also pointed out that approximately 80% of the interest advantage in the blended credit program results from a Federal guarantee of credit, whereby the full faith and credit of the government stands behind loans to exporters, but little direct outlay of Federal funds is involved (assuming that there are no defaults which the government must cover). It was asserted that application of cargo preference to this kind of program would have a multiplier effect on direct Federal outlays, making the program too costly to maintain. For that reason these witnesses supported suspension of the program. Concern was expressed that future judicial action might apply cargo preference to straight loan guarantee programs in addition to blended credit. It was also suggested that the funding for cargo preference be taken out of USDA's budget and put into DOT's budget.

Witnesses for ship operators, maritime labor and maritime trade associations testified that neither our farmers nor foreign importers of our products pay anything extra because of cargo preference. USDA pays any differential between the prevailing foreign-flag shipping rate and a reasonable U.S.-flag rate. Since neither the U.S. exporter nor the foreign importer pay for that freight differential, the ability to export is not affected. The Government pays these costs as part of a longstanding policy of promoting the U.S. merchant marine for both commercial and national defense purposes.

The maritime witnesses asserted that the over-valued dollar and high domestic price support loan rates are largely responsible for poor exports, not cargo preference. They pointed out that cargo preference affects less than 2 percent of total U.S. agricultural exports and costs less than eight-tenths of 1 percent of the $18.4 billion the Government expects to spend in 1985 on farm income stabilization. They also noted that transfer of cargo preference funding out of USDA's budget would proably not result in a like amount of money being made available for the purchase of com-

modities, but rather a reduction in the USDA's budget to reflect the transfer. USDA suggested the likelihood of this result in testimony before the Merchant Marine Subcommittee in 1982.[15] Several witnesses asserted that U.S.-flag rates for preference cargoes had been dropping as newer and more efficient U.S.-flag ships come into the preference trades. One witness cited statistics demonstrating that the U.S.-flag rates for bulk carriers carrying Public Law 480 cargo were actually lower in 1983 and 1984 than foreign-flag bulk ship rates in 1981.

Several witnesses to an ongoing study by the General Accounting Office which identified poor management practices at USDA in connection with ocean freight bookings and at MarAd in connection with setting guidelines rates for preference cargoes. It was asserted that these practices inflated the cost of transporting agricultural commodities on both U.S.- and foreign-flag ships.

It was also pointed out that the U.S. dry-bulk fleet consists of only 22 vessels. Without Government support most of these vessels would go out of business. The U.S.-flag merchant marine cannot compete with foreign-flag fleets because U.S. vessel construction and operating costs are higher, and because most foreign nations subsidize their merchant fleets. The choice is not between saving money or spending money through cargo preference; the choice is between spending money through cargo preference or spending money through other forms of support. The advantage of cargo preference is that it supplies cargo—the "lifeblood" of ocean carriers—rather than cash subsidies.

Markup

The Committee met in executive session on June 19, 1985, to consider S. 721. After discussion of the issue, Senator Stevens moved to report the bill unfavorably. The motion was adopted on a 9 to 7 roll-call vote. A majority of the Committee believes that: (1) the cargo preference laws serve to further the national policy stated in the Merchant Marine Act, 1936—i.e., of having a merchant fleet built, owned, and operated by Americans that is sufficient to meet the nation's domestic and foreign waterborne commerce requirements and capable of serving as a military adjunct in time of conflict; (2) that the costs of cargo preference are borne by the taxpayers as a whole in furtherance of that national policy; (3) that both agriculture and the merchant marine require assistance to promote their economic well-being; and (4) that the cargo preference laws should not be modified by broad, ill-defined exceptions or excessive administrative discretion. The Committee therefore recommends that the Senate not pass S. 721.

SUMMARY OF MAJOR PROVISIONS

The bill limits the application of the cargo preference laws (Public Resolution 17 and Public Law 664) to certain activities of the Secretary of Agriculture or the CCC. The bill specifically provides that the cargo preference laws do not apply to export activi-

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[15] Government Cargo Preference, Hearing before the Subcommittee on Merchant Marine of the Senate Committee on Commerce, Science and Transportation, 97th Congress, 2d Session 36 (1982).

ties undertaken by the Secretary or CCC: (1) under which CCC-owned stocks of agricultural commodities or products are made available to U.S. exporters, users, processors, or foreign purchasers for the development, maintenance, or expansion of U.S. agricultural export markets; (2) under which commercial credit guarantees are blended with CCC direct credits to reduce the effective interest rate on export sales of U.S. agricultural commodities and products; (3) under which CCC credit or credit guarantees are extended for not more than 3 years to finance or guarantee export sales of U.S. agricultural commodities or products; or (4) for the purpose of promoting the export of U.S. agricultural commodities or products, if the Secretary determines that such activities are necessary to cause such commodities or products to become or remain competitive under conditions prevailing in international trade.

The bill makes no change in the application of the cargo preference laws to the export activities of the Secretary or CCC when these activities are carried out under the Agricultural Trade Development and Assistance Act of 1954 (Public Law 480) or subsections (a), (b), and (c) of section 416 of the Agricultural Act of 1949 (Dairy Donation Program).

The bill does not apply to any export activity undertaken to carry out any agreement entered into prior to the date of enactment.

The Senate Agriculture Committee Report (Senate Report No. 99-65) on S. 721 does not specify which export programs would fall into the 4 categories. If broadly construed, the language of subsection (a)(1) would exempt from cargo preference requirements all programs promoting the export of Government-owned agricultural commodities (e.g., export PIK, BICEP, etc.), except those given away for exclusively humanitarian purposes (e.g., Public Law 480, Title II). Subsection (a)(2) is clearly intended to exempt the blended credit program. Subsection (a)(3) is apparently intended to exempt programs, other than blended credit, which grant short-term government credits or credit guarantees to export of privately-owned agricultural commodities (e.g., GSM-102 and GSM-5).

Subsection (a)(4) of the bill is a catch-all provision which would allow the Secretary of Agriculture to exempt any other export program if the Secretary determines that the program is "necessary to cause such commodities or product to become or remain competitive under conditions prevailing in international trade." Such a deterrmination is "committed solely to the discretion of the Secretary and shall be final and conclusive." The breadth of this grant of discretionary power to the Secretary makes it impossible to assess prospectively which export programs would be affected. However, it is clear that this subsection grants the Secretary power to exempt virtually all export programs save those with an exclusively humanitarian purpose, or those specified in subsection (b) of the bill, i.e., Public Law 480 and the Dairy Donation Program.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget

Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 24, 1985.

Hon. JOHN C. DANFORTH,
Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Dirksen Senate Office Building, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 721, a bill to clarify the application of the cargo preference laws in the export of agricutural commodities, as ordered reported by the Senate Committee on Commerce, Science, and Transportation, June 19, 1985. This bill would exempt certain export activities of the Commodity Credit Corporation (CCC) from cargo preference laws. The following activities would be exempted: programs using CCC commodities to develop, maintain, or expand export markets; short-term direct and guaranteed export credit; blended credit; and program undertaken to promote U.S. agricultural exports if the Secrtary of Agriculture determines that such activities are necessary for commodities to remain competitive in international trade.

This bill would have no direct effect on federal outlays. The Department of Agriculture (USDA) does not now pay for ocean shipping or the ocean freight differential for exports generated by activities exempted in the bill. The bill would, however, allow blended credit activities of the CCC to resume. These activities were suspended on February 26, 1985, following a U.S. District Court ruling that exports financed through blended credit are subject to the cargo preference laws.

The USDA has $325 million available during 1985 for export promotion activities. These funds could be used for short-term direct loans, blended with guarantees in the blended credit program, or for other export promotion activities. At the time of suspension of the blended credit program, $107 million had been announced for use in the program during the current fiscal year. No other plans for use of the available $325 million had been announced.

Enactment of this bill would allow the planned $107 million to be used in the blended credit program, generating outlays of that amount during 1985 and receipts over the following three years as the loans are repaid. The USDA would decide how much additional money could be committed to blended credit if this bill were to be enacted, and the department has not yet indicated its plans. Furthermore, the USDA has not yet made clear how available funds would be used if the suspension of the blended credit progrm remains. In the absence of this information from the department, it is impossible to estimate the effects of this bill on CCC outlays.

The bill would not affect the budgets of state and local governments.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

RUDOLPH G. PENNER,
Director.

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported. S. 721 excludes certain kinds of agricultural export programs from the application of the cargo preference laws. Some of these programs are dormant. With respect to USDA's blended credit program S. 721 would reverse the District Court decisions in *Transportation Institute* v. *Dole,* which was cited by the Secretary of Agriculture as the reason for suspending the blended credit program. Presumably, the program would be reactivated following passage of S. 721.

Regulations for the blended credit program components (i.e., CCC short-term direct credits and credit guarantees) are already operational. No further regulations are anticipated as a result of this legislation. Program participation is voluntary.

This legislation would result in no change in Public Law 480 and section 416 programs, as cargo preference requirements are presently being applied with in these programs. The economic impact of these regulations is not changed by this bill. Participation by U.S.-flag vessels in export shipments under these programs also should not be affected. Existing regulations pertaining to cargo preference would remain in place and no change would be necessary.

The bill would not have any impact on the personal privacy of the individuals affected.

The amount of paperwork necessary to administer existing regulations under these programs should not change.

ROLLCALL VOTES IN COMMITTEE

In accordance with paragraph 7(c) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following record votes during its consideration of S. 721:

On the motion made by Senator Stevens to report S. 721 unfavorably:

YEAS	NAYS
Mr. Gorton	Mr. Danforth
Mr. Stevens	Mr. Goldwater[1]
Mr. Trible	Mrs. Kassebaum
Mr. Hollings[1]	Mr. Pressler
Mr. Long[1]	Mr. Kasten
Mr. Inouye	Mr. Exon
Mr. Ford[1]	Mr. Gore[1]
Mr. Riegle[1]	
Mr. Rockefeller[1]	

[1] By proxy.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee states that the bill as reported would make no change to existing law.

MINORITY VIEWS OF MESSRS. DANFORTH, KASSEBAUM, KASTEN, AND EXON

Seven Members of the Committee voted against the motion to report S. 721 unfavorably. These Members support S. 721 as reported by the Senate Committee on Agriculture, Nutrition and Forestry, and subscribe to the views and arguments presented in Senate Report 99–65, (May 20, 1985). Senators Danforth, Kassebaum, Exon, Kasten, and Pressler are co-sponsors of S. 721.

Some of the dissenting Members of the Commerce Committee oppose the application of cargo preference requirements to any and all Federal farm export programs, while others oppose their application to the "commercial" (as opposed to "concessional") farm export programs.

The primary thrust of S. 721 is to exempt present and future "commercial" farm export programs from cargo preference requirements. In such instances, the added program costs of meeting cargo preference requirements offset the competitive advantage provided by the commercial subsidy program. For example, the USDA recently suspended sales registrations for $536 million following the Federal district court decision applying cargo preference requirements to the blended credit program (*Transportation Institute* v. *Dole,* February 21, 1985).

In their opposition to the application of cargo preference to commercial sales programs, the dissenting Members of the Committee are fully supported by the administration. In a letter dated June 18, 1985, from David Stockman, Director of the Office of Management and Budget, to Senator Danforth, Chairman of the Commerce Committee, the administration outlined its position:

> The administration is concerned about the court's decision in *Transportation Institute* v. *Dole* and its impact on agricultural export promotion programs of the CCC and the USDA.
>
> While the administration supports the application of the cargo preference laws to concessional sales and food donation programs under Public Law 480, it has never believed that the cargo preference requirements should be applicable to export promotion programs, such as the blended credit program. If allowed to stand, the court's decision will have a severe detrimental impact on the ability of the U.S. agricultural sector to maintain a competitive international position. Accordingly, the administration has decided to seek reversal of the court's decision.
>
> In recognition of the fact that the appeals process may take several years, the administration would support legislation which would return us to the status quo prior to the Federal district court decision concerning the application

of the cargo preference requirements to agricultural export promotion programs. Legislation which we could support would exclude from the cargo preference requirements commercial exports of agricultural commodities under the following export promotion programs administered by the Secretary of Agriculture and by the CCC:

The export credit sales program carried out by the CCC (commonly referred to as "GSM-5");

The export credit guarantee program carried out by the CCC (commonly referred to as "GSM-102");

The program carried out by the CCC under which GSM-102 commercial credit guarantees are blended with direct interest-free GSM-5 credits to reduce the effective rate of interest on export sales of U.S. agricultural commodities or products thereof (commonly referred to as the "Blended Credit Program"); and

Programs carried out by the CCC under which stocks of agricultural commodities or the products thereof acquired by the Corporation are made available to U.S. exporters, users, or foreign purchasers, to reduce the effective price on export sales of United States agricultural commodities or products thereof.

The administration will oppose legislation which would remove cargo preference requirements from programs under which U.S. agricultural commodities or products thereof are donated, bartered, or sold for foreign assistance or humanitarian purposes under concessional terms, including those programs carried out under the Agricultural Trade Development and Assistance Act of 1954, section 416 of the Agricultural Act of 1949, and the Food Security Wheat Reserve Act of 1980.

The dissenting members would support this administration proposal—although not as broad in its application as S. 721—as an improvement over current law. The draft legislation transmitted by the Office of Management and Budget more specifically describes the "commerical" programs to be exempted from cargo preference requirements, as well as the "concessional" programs which would continue to fall under those requirements. The draft legislation would not confer on the Secretary of Agriculture, as S. 721 does, broad powers to develop new agriculture export programs and to determine the applicability of cargo prefence to them.

A primary conern of the dissenting members is the manner by which cargo preference costs are funded. Clearly, cargo preference is a subsidy for the U.S. maritime industry. Support for S. 721 is not predicated on a desire to deprive our declining maritime industry of a subsidy. Rather, it is the Members' desire to separate the maritime and agriculture subsidies, to place each on its own footing and remove from Federal agriculture promotions the burden of cargo preference costs.

If cargo preference is a maritime subsidy, it should be funded separately from the farm export subsidies. By providing a cargo preference line item in the budget, the merits of this maritime program and the appropriate level of funding could be better scruti-

nized. By placing the funding and administrative responsibility within the DOT the separation would become complete. To the extent sufficient funds are authorized and appropriated each year, they would be available to pay the higher cost of U.S.-flag shipping, without detrimentally impacting farm export initiatives.

The logical alternative to a separation of funding for the maritime and agriculture promotion efforts is a limit on the application of cargo preference. That is the purpose of S. 721.

Reducing Transportation Costs

It is not the goal of the dissenting members of the Committee to cause the demise of the U.S. merchant marine. The goal, rather, is to reduce the transportation costs for agricultural exports in order to increase the amount of farm products we send abroad.

Limiting the application of the cargo preference law will reduce transportation costs. There are other initiatives which would complement such a limitation. The GAO is presently preparing a report entitled *Transportation of Public Law 480 Commodities—Efforts Needed to Eliminate Unnecessary Costs.* In its *Draft of a Proposed Report,* GAO reported that USDA may be paying substantially higher ocean freight rates than necessary. GAO concludes:

> Agriculture lacks sufficient involvement with and control over the bidding and negotiation process. Foreign countries or their agents have no incentive to negotiate lower U.S.-flag transportation rates, and Agriculture has inadequate procedures and controls to insure the integrity of the process. Also, Agriculture needs to better manage its responsibilities for complying with cargo preference requirements, approving vessel selections arranged by foreign countries, and calculating Ocean Freight Differential payments.
>
> MarAd assists Agriculture by calculating a fair and reasonable rate (based on cost and profit) which is the maximum transportation rate that a U.S.-flag vessel can receive for a voyage. Maritime inadequately assures that each vessel's transportation rate does not exceed a fair and reasonable rate.

The GAO draft outlines specific examples illustrating the need to improve USDA export procedures for Public Law 480 commodities. These procedures are presently being used for programs other than Public Law 480 as well. Regardless of the success of legislative efforts to limit application of cargo preference requirements, improved transportation procedures are critical if USDA is to maximize the effectiveness of farm export programs. The Draft Report states (at page iv):

> GAO identified examples in five areas which illustrate the need to emphasize a policy of minimizing Agriculture expenditures for transporting Public Law 480 title I commodities. Such a policy could save Agriculture millions of dollars each year in unnecessary OFD payments while still maintaining cargo preference requirements. The savings could be used to reduce the program's cost or increase

commodity purchases. The five areas include: (1) preparing OFD calculations; (2) allocating cargo between United States and foreign vessels; (3) approving procurements on the basis of the lowest total cost for commodities and transportation (lowest landed cost); (4) requiring demurrage and dispatch (financial incentives for timely vessel loading and unloading) in vessel contracts; and (5) managing tender terms (specifications for transportation contracts).

Further, the Draft Report points out certain disadvantages of using brokers to arrange ocean transportation. According to testimony heard by the Committee during hearings on Cargo Preference (April 24, 1985), only USDA uses such a "broker" system; it appears to be fraught with inefficiency, with corruption not unknown. The Draft Report states (at page ii and iii):

> Agriculture needs more involvement with and control over the bidding and negotiation of ocean transportation contracts. Under the process, foreign countries or their agents receive transportation offers and negotiate the rates for U.S. and foreign flag vessels. They have no incentive to negotiate lower rates for U.S.-flag vessels because Agriculture pays the additional costs of using U.S.-flag vessels. Also, Agriculture's procedures and controls to assure the integrity of the process are inadequate because country agents—
>
> Use a closed tender approach whereby bids are not generally opened in public which could allow the submission of late bids or bids based on knowledge of already submitted bids;
>
> May negotiate with any preferred vessel owner or broker (company that represents vessels attempting to obtain cargo) which does not provide assurance that the lowest possible transportation rates are negotiated for U.S. flag vessels;
>
> May serve as vessel brokers when not serving as country agents which could lead to favoritism in the negotiation of rates and the selection of vessels.
>
> As a result, the process does not provide assurance that Agriculture's transportation costs are the lowest possible.

At the Committee hearing, the MarAd witnesses responded in detail as to that agency's efforts to improve its procedures, following GAO's recommendations. Further they described a proposed joint transportation office that could be employed to reduce transportation costs.

> It would be a joint function among the three Federal agencies involved, that is, the USDA, the Agency for International Development (AID) and MarAd would, within existing ceilings and existing personnel, form a joint management office for the Public Law 480 program.
>
> One of the things that office would undertake would be the use of consecutive voyage charters for U.S.-flag vessels. We have found that when we have been able to develop

> consecutive voyage charters, the rates have dropped significantly. A prime example of that is in the U.S.-Israeli grain rate where the rates have been cut in half under long-term voyage charters. (Testimony of Adm. H. Shear, Administrator, MarAd.)

Unfortunately, similar enthusiasm on the part of USDA for reform of procedures and reduction in transportation cost was not evident at the hearing. The dissenting members strongly urge all agencies and departments to make this a high priority and work vigorously to reduce transportation costs.

Very simply, better management and lower transportation costs will benefit farmers. For example, forcing shipping companies to bid competitively for a predetermined package of voyages to the Mideast, rather than single one-way movements, has cut U.S.-flag freight rates for grain in half over the past 2 years, allowing for increased grain purchases. Competitive bidding for long-term charters has also provided substantial savings for the Navy's Military Sealift Command, which applies similar cargo preference laws to military cargo. Competitive bidding can separate the truly competitive U.S.-flag vessels from old, inefficient, and sometimes unsafe ships which have in the past made the cargo preference program such an expensive burden.

Regardless of the course of present efforts to limit the scope of cargo preference, transporation savings must be pursued. The savings, in turn, would either reduce the total agricultural export program costs, or be used to increase commodity purchases to further benefit this nation's agricultural community. This Committee will closely monitor DOT, AID, and USDA efforts towards this end.

Finally, the dissenting members wish to emphasize the immediate issue. It is imperative that we get our Government-assisted agricultural exports moving again.

Reasonable people may disagree about the need to subsidize the maritime industry, or about the method by which the subsidization should be carried out. However deserving of help some of us believe that industry to be, we believe Congress's overriding responsibility now is to the American farmer. With farm exports already depressed by unfavorable exchange rates and aggressive foreign use of subsidies, it would be foolish to allow the current controversy to emasculate the modest export-enhancement programs we have now.

This is the main reason we supported S. 721 in committee, and the reason we shall again support it on the Senate floor.

JOHN C. DANFORTH.
NANCY LANDON KASSEBAUM.
BOB KASTEN.
J. JAMES EXON.

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Calendar No. 197

99TH CONGRESS
1st Session

SENATE

REPORT
99-90

INTERNATIONAL AIR TRANSPORTATION PROTECTION ACT OF 1985

JUNE 24 (legislative day, JUNE 3), 1985.—Ordered to be printed

Mr. DANFORTH, from the Committee on Commerce, Science and Transportation, submitted the following

REPORT

together with

MINORITY VIEWS

[To accompany S. 1218]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 1218) to amend the Federal Aviation Act of 1958 to provide for the revocation of certain certificates for air transportation, and for other purposes, having considered the same, reports favorably, thereon with an amendment in the nature of a substitute and recommends that the bill do pass.

PURPOSE OF BILL

S. 1218, as reported, provides that the Secretary of Transportation shall revoke foreign air transportation certificates if a carrier that has been the subject of a takeover tries to sell those certificates as part of the liquidation of the carrier. The purpose of the legislation is to reduce the incentive for potential airline purchasers to speculate on the resale of an airline's international route rights.

BACKGROUND AND NEEDS

U.S. air carriers obtain the right to serve foreign destinations through negotiations between the U.S. Government and foreign governments which result in bilateral agreements or treaties with the respective foreign countries. Many of these bilateral agree-

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ments provide for a limited number of U.S. carriers to serve a particular market. The Department of Transportation (DOT) selects the U.S. carrier(s) which will provide the service agreed to in the bilateral agreement, and issues carrier certificates licensing airlines to fly the specified foreign routes. Due to the limited number of carriers permitted to serve on certain routes, these certificates are of considerable value to their holders.

Recently, concern has arisen over the sale of foreign route certificates between carriers. In particular, there is concern that a takeover of an airline may be based in part on a belief that its certificates may be sold as part of the liquidation of the airline. Such sales may circumvent the competitive carrier selection process employed by DOT, even though DOT approval is needed for any such sale. Also, the consumer may be adversely affected by such a transfer if a less competent carrier obtains the rights to serve a particular market. Finally, such a transfer may impair U.S. relations with our bilateral partners.

Legislative History

S. 1218 was introduced by Senator Danforth on May 23, 1985. The Committee held 1 day of hearings on the bill on June 12, 1985. On June 13, 1985, the Committee ordered S. 1218 reported favorably with an amendment in the nature of a substitute, offered by Senator Danforth.

Summary of Major Provisions

As reported, S. 1218 would:

(1) Direct the Secretary of Transportation to revoke the foreign air transportation certificate of a carrier that was the subject of a takeover if that carrier attempted to sell the certificate as part of the liquidation of the carrier; and

(2) create a rebuttable presumption that any certificate sale within 3 years of a takeover is part of the liquidation of the carrier.

Estimated Costs

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

U.S. Congress,
Congessional Budget Office,
Washington, DC, June 17, 1985.

Hon. John C. Danforth,
Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has reviewed S. 1218, the International Air Transportation Protection Act of 1985, as ordered reported by the Senate Committee on Commerce, Science, and Transportation, June 13, 1985. We expect that

enactment of this bill would result in no significant cost to the federal government, and in no cost to state and local governments.

The bill directs the Secretary of Transportation to revoke an international route certificate held by an airline if the carrier attempts to sell the certificate as part of a liquidation process. International route certificates are awarded to air carriers to fly to certain foreign countries with limited entry access. Once awarded, these routes may be sold to another carrier, subject to the Secretary's approval.

The intent of this bill is to make it more difficult for an airline to sell its certificates if it recently has been taken over by a new owner. S. 1218 specifies that if an airline attempts to transfer or sell its certificates within three years after a takeover has occurred, the sale is presumed to be part of the liquidation of the carrier, and the Secretary must revoke the certificates. The bill provides an opportunity for a hearing, in which the carrier may attempt to show that the sale is not part of the liquidation of the airline, and, if the Secretary agrees, the carrier may proceed with the sale.

Based on information from the Department of Transportation, we do not expect this bill to result in any significant cost to the federal government. Very few carriers could be affected by the bill, and any sale of international route certificates would require the Secretary's approval in any event. Thus, no significant additional costs for hearings or other administrative activities are likely to be incurred.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

RUDOLPH G. PENNER,
Director.

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported.

The bill requires DOT to take certain actions when a sale of a foreign air transportation certificate is attempted following a corporate takeover. Since DOT approval for each sale is required by current law, the bill should not substantially increase the regulatory burden on any company or individual. The bill merely modifies the decisional criteria employed by DOT in these limited situations.

There should be no effect on the personal privacy of individuals due to enactment of the legislation. No significant new paperwork burdens would be placed on any person if S. 1218 were enacted into law.

SECTION-BY-SECTION ANALYSIS

SECTION 1.—SHORT TITLE

This section provides that the bill may be cited as the "International Air Transportation Protection Act of 1985."

SECTION 2.—FINDINGS AND PURPOSE

This section states that it is the finding of Congress that the United States and its citizens rely on foreign air transportation provided by carriers who are "fit, willing and able" to perform such transportation, and that under certain circumstances, takeovers of air carriers may jeopardize dependable and safe foreign transportation.

This section further states that it is the purpose of S. 1218 to protect against this occurrence and to cause the revocation of foreign route certificates in particular situations.

SECTION 3.—REVOCATION OF CERTIFICATES

This section provides that the Secretary of Transportation, on an expedited basis, shall revoke an air carrier's foreign route certificate if the following conditions are met:

1. A takeover of that carrier occurred on or after May 23, 1985;
2. A sale or transfer, or attempted sale or transfer, of that certificate occurred on or after May 23, 1985; and
3. That sale or transfer was part of the liquidation of such carrier or was otherwise not in the ordinary course of business. A rebuttable presumption that the sale is part of a liquidation is created if the sale occurs within 3 years of the takeover.

This section also affirms that any foreign route certificate revoked pursuant to the provisions of this section may be reissued by the Secretary of Transportation, upon making those findings required by existing law.

This section, which contains the operative provisions of the legislation, is designed to discourage airline takeovers which have as their main purpose the liquidation and dismemberment of an air carrier, rather than maintaining service. It is the Committee's view that airlines should be operated in the public interest, and that their foreign route rights should not be purchased and sold for speculative purposes.

Foreign route rights are quasi-public commodities, awarded by the DOT to air carriers "fit, willing, and able" to provide dependable foreign air transportation. Congress' intent that such certificates not be transferred other than in the public interest is clearly articulated in section 401(h) of the Federal Aviation Act of 1958 (49 App. U.S.C. 1371).

The Committee is aware that section 408 of the Federal Aviation Act of 1958 (49 App. U.S.C. 1378) requires the DOT's prior approval of any major air carrier transaction which involves a considerable portion of another carrier's properties. The Committee does not intend, by this legislation, to broaden or expand that statutory authority. The bill, as reported, merely gives direction to the Secretary's present regulation of foreign aviation routes. Such regulation is necessary because certain foreign governments will not allow the free entry of U.S. carriers into their markets.

With regard to certain terms used in this section, it is the Committee's intention that in general they be given their ordinary meanings. In two instances, however, some additional explication may be helpful.

Concerning route certificate sales which are "other than in the ordinary course of business" paragraph (1)(B) of proposed section 401(s) of the Federal Aviation Act of 1958 creates a rebuttable presumption that transfers of certificates which occur within 3 years after a takeover are "other than in the ordinary course of business". After those 3 years have expired, it is the Committee's view that business decisions made to further and continue the operations of an airline are "in the ordinary course" of that carrier's business. The occasional sale of foreign route certificates, for instance, might well be found to contribute to the sound operation of a carrier, to promote efficiency, and therefore to be in the "ordinary course." A wholesale selloff of certificates, on the other hand, intended to provide capital with which to purchase a football team, for instance, presumably would not be found to be in the "ordinary course."

"Takeover," for purposes of this bill, is intended to mean "effective control." Situations in which control of less than a majority of the shares of a corporation gave their owner effective control of the company are not difficult to hypothesize. Thus, a "takeover" as defined here would not necessarily require control of 51 percent or more of a corporation's outstanding voting stock.

To reiterate, this legislation is not designed to prevent the sale of route certificates in the ordinary course of a carrier's business. This, when coupled with the fact that the bill's provisions only apply in the case of a takeover, should mitigate any concerns that the bill is overly regulatory, or would adversely affect airline financing arrangements.

Rollcall Votes in Committee

In accordance with paragraph 7(c) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following record votes during its consideration of S. 1218:

On June 13, 1985, the Committee met to consider S. 1218. The result of this consideration was the adoption of a substitute version, offered by Senator Danforth, by a vote of 15 to 1.

On motion to report S. 1218 favorably, with an amendment in the nature of a substitute:

YEAS—15	NAYS—1
Mr. Danforth	Mr. Hollings [1]
Mr. Packwood [1]	
Mr. Goldwater [1]	
Mrs. Kassebaum	
Mr. Pressler	
Mr. Gorton	
Mr. Stevens [1]	
Mr. Kasten	
Mr. Trible	
Mr. Inouye	
Mr. Ford	
Mr. Riegle [1]	
Mr. Exon [1]	
Mr. Gore	
Mr. Rockefeller	

[1] By proxy.

Changes in Existing Law

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

The Federal Aviation Act of 1958

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TITLE I—GENERAL PROVISIONS

* * * * * * *

TITLE IV—AIR CARRIER ECONOMIC REGULATION

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(d) Issuance of certificate.
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(m) Application for new mail service.
(n) Additional powers and duties of Board with respect to charter air carriers.
(o) Air transportation of persons or property.
(p) Procedures for processing applications for certificates.
(q) Insurance and liability.
(r) Continuing requirement.
(s) Revocation of certain certificates.

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SECTION 401 OF THAT ACT

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

SEC. 401. (a)–(4) * * *

REVOCATION OF CERTAIN CERTIFICATES

(s)(1)(A) The Secretary shall, in order to effectuate the declaration of policy set forth in section 102(a) of this Act, exercise the Secretary's authority contained in subsections (g) and (r) of this section and revoke a particular certificate for the provision of foreign air transportation issued to an air carrier if the Secretary establishes, in accordance with paragraph (3) of this subsection, that a takeover of such air carrier occurred on or after May 23, 1985 and that a sale or transfer, or attempted sale or transfer, of such certificate occurred on or after such date as part of the liquidation of such air carrier or other than in the ordinary course of such air carrier's business.

(B) For purposes of subparagraph (A) of this paragraph, a sale or transfer, or attempted sale or transfer, of such certificate within 3 years after a takeover has occurred shall be presumed to be part of the liquidation of such air carrier or other than in the ordinary course of such air carrier's business, unless the Secretary, after notice and the opportunity for a hearing, determines that the presumption has been rebutted by a preponderance of the evidence.

(2) Notwithstanding any other provision of law, the Secretary shall carry out the activities required under paragraph (1) of this subsection on an expedited basis.

(3) Nothing in this subsection shall be construed to preclude the Secretary from issuing any certificate for the provision of foreign air transportation which is revoked under this subsection either to the air carrier which previously held such certificate or to any other applicant, if the Secretary finds that—

(A) such air carrier or applicant is fit, willing, and able to perform such transportation properly and to conform to the provisions of this Act and any rules, regulations, and requirements issued under this Act; and

(B) such transportation is consistent with the public convenience and necessity.

MINORITY VIEWS OF MR. HOLLINGS

What we have in S. 1218 is a perfect example of how not to legislate. This totally unnecessary measure is nothing more than a panicked response to a nonproblem.

S. 1218 was solely the result of Mr. Carl Icahn's announced intention to acquire Trans World Airlines (TWA), the Nation's fifth largest air carrier and the holder of a significant number of domestic and international routes. Mr. Icahn, who has gained a great deal of notoriety in recent years as a corporate raider, had originally stated that he intended to dismantle TWA. There were fears that he only wanted the company so he could sell off its highly prized international routes at a quick profit. More recently, however, Mr. Icahn articulated his desire to operate the airline and, most notably continue international service.

Nevertheless, the possibility of an Icahn takeover of TWA was like the acorn dropping on Chicken Little. TWA, conveniently setting aside its unending support for airline deregulation and its disdain for Government intervention in the "free market," came before the Chairman and the Aviation Subcommittee and asked for protection from Mr. Icahn. Convinced that the sky was indeed falling, the Chairman and Senator Eagleton quickly introduced S. 1218, which would prohibit the sale of international airline routes after a hostile takeover and subsequent liquidation. The scare spread throughout the Commerce Committee, as evidenced by the 15 to 1 vote in favor of the bill.

I find it rather embarrassing that the remarks of one businessman appearing on the financial pages would cause members of the world's greatest deliberative body to rush pell-mell to legislate. This is not how great public laws are made.

I find it incredible, through, that the Committee would approve this bill so hastily when there is obviously no need for it. The DOT, in its rejection of TWA's request that Mr. Icahn be investigated to determine his fitness to run an airline, argued that there is no credible evidence "that Mr. Icahn's control of TWA would deprive it of the managerial expertise necessary to meet our fitness standard." In addition, DOT told the Committee that current law allows the Secretary of Transportation to revoke international air certificates if they are not being used in the public interest. Thus, DOT doesn't need legislation such as S. 1218.

Finally, and perhaps most importantly, the situation which precipitated the introduction of S. 1218 no longer exists. After realizing that neither the courts nor DOT were about to intervene, TWA sought a "white knight" to save the company from the clutches of Mr. Icahn. The company was successful in this endeavor. When the dust settled, Texas Air Corporation emerged as the best offerer and mounted a friendly takeover. End of problem.

Rather than face the fact that any premise for S. 1218 was now nonexistent, the bill was revised at the 11th hour to extend its reach to cover all airline takeovers, whether hostile or friendly. In addition, the substitute version applies for 3 years after an airline takeover.

What was originally a panic bill introduced strictly to save TWA from Mr. Icahn has evolved into industry-wide legislation. There has been no consideration of S. 1218's effect on future airline acquisitions and mergers. There have been no hearings. What some believed to be a good idea for TWA is automatically presumed to be good for the entire airline industry.

How are we to know that? Last April, Pan American Airways [Pan Am] announced the proposed sale of its international routes in the Pacific basin to United Airlines. Most people seem to agree that this sale is good for both the ailing Pan Am and the flying public. Yet, if Pan Am had recently been acquired and S. 1218 had been law, the route sale would have been impossible. Is this good public policy?

The Committee seems to think so. But if we're going to re-regulate the airline industry, then there are better ways to do it. Let's hold hearings, study the problems of the industry, and draft sensible solutions that protect the public interest. But let's not take this piecemeal approach of protecting individual carriers whenever they discover an aspect of deregulation that is not to their liking. I urge the Senate to reject this legislation.

ERNEST F. HOLLINGS.

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